No. 71-883

In The Supreme Court of The United States

FEBRUARY TERM, 1972

Supreme Court, U.S.
FILED
JAN 7 1972
E. T.

CEDALLE H. PEARL,

Petitioner

v.

MELVIN R. LAIRD, Secretary of Defense,
FRANCIS SARGENT, Governor of Massachusetts,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

CEDALLE H. PEARL, pro se
79 Glenville Avenue
Allston, Mass. 02134

FILED:
January 7, 1972

TABLE OF CONTENTS

	PAGE
Opinions Below	1, 2
Jurisdiction	2
Questions Presented	2
Constitutional Provisions, Statutes, and Treaties Involved	3, 4
Statement of the Case	4, 5, 6
Argument	6
Reasons for Granting the Writ	6, 7
Conclusion	7
Appendix	8
U. S. District Court for the District of Mass. Docket Entries	8
U. S. Court of Appeals for the First Circuit Judgment	8, 9
Complaint	10, 11, 12
Motion to Amend Complaint	13, 14
Notice of Appeal	15
Statement of Issues	16

TABLE OF AUTHORITIES CITED

Constitutions, Statutes, and Treaties

	Page
U.N. Charter, Chapter 1, article 1	3, 4
U.N. Charter, Chapter 1, article 2	4
U. S. Constitution, Article 1, section 10	3
U. S. Constitution, Article VI	3
28 U.S.C. 1254 (1)	17
28 U.S.C. 1331 (a)	17
28 U.S.C. 1343 (1, 2, 3)	17, 18
28 U.S.C. 1361	18

In The Supreme Court of The United States

FEBRUARY TERM, 1972

No. . . . .

CEDALLE H. PEARL,

Petitioner

v.

MELVIN R. LAIRD, Secretary of Defense,
FRANCIS SARGENT, Governor of Massachusetts,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Cedalle H. Pearl, petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit in the above entitled case.

OPINIONS BELOW

The opinions of the U. S. District Court for the District of Mass.; the original complaint was dismissed "For failure to state a cause of action within the jurisdiction of this court." (appendix, page 8). The Motion to amend the complaint by adding 28 U.S.C. 1331, 28 U.S.C. 1343, and

28 U.S.C. 1361 was, "Denied, no reason given." (appendix, pages 8, 13, 14). The U. S. Court of Appeals for the First Circuit judgment was "No opinion was filed." (appendix, pages 8, 13, 14) entered on October 14, 1971.

JURISDICTION

Jurisdiction to review the judgment of the Court of Appeals for the First Circuit by writ of certiorari is conferred by 28 U.S.C., section 1254 (1). Jurisdiction for the U. S. District Court for the District of Mass. was based on 28 U.S.C. 1331 (a), 28 U.S.C. 1343 (1, 2, 3) and 28 U.S.C. 1361 (appendix pages 17, 18).

QUESTIONS PRESENTED

1. Has a citizen of the United States the right to be heard in a court of law when she believes that an official or employee of the U. S. Government or a governor of a state has violated the U. S. Constitution?

2. Is the violation of the U. S. Constitution by an official or employee of the U. S. Government or a governor of a state a justiciable matter?

3. Is a treaty signed by the U. S. Government, which makes the treaty the supreme law of the land, valid in all courts of law in the United States?

4. Is the U. S. Constitution, the law of the land, valid in all courts of law in the United States?

CONSTITUTIONAL PROVISIONS, TREATIES, AND STATUES INVOLVED

This case involves the violation of the U. S. Constitution, article 1; section 10 by Francis Sargent, Governor of Mass. which states, "*No state shall without the consent of Congress,* lay any duty tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or ENGAGE IN WAR, UNLESS ACTUALLY INVADED, OR IN SUCH IMMINENT DANGER AS WILL NOT ADMIT DELAY." (appendix, pages 11, 12).

The respondents, Melvin R. Laird, Secretary of Defense, and Francis Sargent, Governor of Mass., are in violation of article VI of the U. S. Constitution which states, ". . . the Senators and Representatives before mentioned, and the members of the several state legislatures, and all EXECUTIVES AND JUDICIAL OFFICERS, BOTH OF THE UNITED STATES and OF THE SEVERAL STATES, shall be bound by oath or affirmation to SUPPORT THIS CONSTITUTION." "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and ALL TREATIES MADE, or WHICH SHALL BE MADE, under the authority of the United States, shall be THE SUPREME LAW OF THE LAND: and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

This case, also, involves the U.N. Charter, a treaty signed by the U. S. Government, Chapter 1, article 1 which the respondents, Melvin R. Laird, Secretary of Defense, and Francis Sargent, Governor of Mass., are in violation of,

"To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by PEACEFUL MEANS, and IN CONFORMITY WITH THE PRINCIPLES OF JUSTICE AND INTERNATIONAL LAW, adjustment or settlement of international disputes or situations which might lead to a breach of the peace. To develop friendly relations among nations based on RESPECT FOR THE PRINCIPLES OF EQUAL RIGHTS AND SELF-DETERMINATION OF PEOPLES; and to take other appropriate measures to strengthen universal peace." U.N. Charter, Chapter 1, article 2, states, "All Members shall settle their international disputes by peaceful means in such a manner that international PEACE, AND SECURITY, AND JUSTICE, are not endangered. All Members shall refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

This case involves 28 U.S.C. 1331 (a), 28 U.S.C. 1343 (1, 2, 3) and 28 U.S.C. 1361. (appendix, pages 17, 18).

STATEMENT OF THE CASE

This action arose when the petitioner filed a complaint asking for an injunction to stop the respondents, Melvin R. Laird, Secretary of Defense and Francis Sargent, Governor of Mass., violations of the U. S. Constitution and the United Nations Charter, a treaty signed by the U. S. Government, which has resulted in the waging of an aggressive war in Vietnam, Laos, and Cambodia.

The U. S. District Court for the District of Mass. dismissed the complaint on July 13, 1971. "For failure to state a cause of action within the jurisdiction of this court, the complaint is dismissed." The docket states, erroneously, that "notice was given to plaintiff at once." The plaintiff was notified of the decision by Miss Maria Karagianis, a reporter of the Allston-Brighton Citizen.

On July 15, 1971, the plaintiff-appellant filed a motion to amend the complaint by adding 28 U.S.C. 1331 (a), 28 U.S.C. 1343 (1, 2, 3), and 28 U.S.C. 1361 (appendix, pages 17, 18). The U. S. District Court immediately "denied" this motion "with no reason given."

On August 9, 1971, notice of Appeal was filed with the U. S. District Court for the District of Mass.

On September 10, 1971, a brief was filed by the plaintiff-appellant with the U. S. Court of Appeals for the First Circuit.

Herbert F. Travers, Jr., U. S. Attorney, James N. Gabreil, Chief, Civil Division, and William A. Brown, Assistant U. S. Attorney, filed a brief for the defendant-appellee, Melvin R. Laird, on October 1, 1971. In this brief, the attorneys contended that, "the question of whether or not Secretary Melvin R. Laird violated the Charter of the United Nations is not a justiciable matter."

On October 8, 1971, the plaintiff-appellant filed a reply brief in which she contends that, "the violations of the United Nations Charter (which is a treaty signed by and agreed to honor by the U. S. Government) is also a violation

of the U. S. Constitution's article VI (appendix, pages 10, 11) therefore is a JUSTICIABLE MATTER." The violation of the laws of the U. S. Constitution by any citizen of the United States regardless of the position or office held is not a political matter but a JUDICIAL MATTER.

Francis Sargent, Governor of Mass., did not file a brief.

On October 14, 1971, the U. S. Court of Appeals for the First Circuit rendered the judgment, "NO OPINION WAS FILED."

ARGUMENT

REASONS FOR GRANTING THE WRIT

1. The U. S. District Court for the District of Mass. "Denied, with no reason," the motion to amend the complaint which gave the court "a cause of action within the jurisdiction of the court" which was the reason for the dismissal of the original complaint. (appendix, pages 8, 13, 14).

2. The U. S. Court of Appeals for the First Circuit dismissed the case with the judgment, "No opinion was filed." (appendix, pages 8, 9).

3. Neither the U. S. District Court for the District of Mass. nor the U. S. Court of Appeals for the First Circuit allowed this case to be heard.

4. The Attorney General of Mass. did not file a reply brief on behalf of Governor Francis Sargent.

5. Since neither the U. S. District Court for the District of Mass. nor the U. S. Court of Appeals for the First Circuit gave any legal reason or opinion for dismissing this case and the question of the validity of the U. S. Constitution is in doubt, the petitioner believes that it is most important that this case should be heard in a court of law.

CONCLUSION

For the reasons stated above, a writ of certiorari should issue to review the judgment, "No opinion filed", of the U. S. Court of Appeals for the First Circuit.

Respectfully submitted,

/s/ CEDALLE H. PEARL
CEDALLE H. PEARD, pro se
79 Glenville Avenue
Allston, Mass. 02134

Filed: January 7, 1972

APPENDIX

U. S. DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS DOCKET ENTRIES

1971		
July	13	Complaint filed.
	13	Complaint dismissed. Wzanski, Ch J. "For Failure to state a cause of action within the jurisdiction of this court, the complaint is dismissed." Notice given to plaintiff at once.
	15	Motion to amend complaint.
	15	"Denied, no reason given." Wzanski, Ch J.
Aug	9	Notice of Appeal filed.

Office of the Clerk
UNITED STATES COURT OF APPEALS
For the First Circuit

Dana H. Gallup
Clerk

1602 U.S.P.O.
& Courthouse
Boston, Mass. 02109

October 14, 1971

To Miss Pearl and Messrs. Mayo and Brown:

No. 71-1249. Pearl v. Laird etc., et al.

Dear Madam and Sirs:

Enclosed to each of you is a typewritten copy of the judgment in this case. No opinion was filed.

Under paragraph (a) of F.R.A.P. Rule 39, costs are taxable in favor of the appellee Melvin R. Laird who, under paragraph (c) of this Rule, may recover the expense of reproducing his brief, and his share, if any, of the cost of reproduction of the appendix to briefs, provided he files an itemized and verified bill of such costs, with proof of service, by October 28, 1971.

Sincerely yours,

(s) Dana H. Gallup
Clerk

DHG/gve
Enclosures

Miss Cedalle H. Pearl
79 Glenville Avenue
Allston, Massachusetts 02134

William A. Brown, Esquire
Assistant U. S. Attorney
1107 U.S.P.O. & Courthouse
Boston, Massachusetts 02109

Walter H. Mayo, III, Esquire
Assistant Attorney General
373 State House
Boston, Massachusetts

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Civil No. CA 71-1472-W

CEDALLE H. PEARL

Plaintiff

v.

MELVIN R. LAIRD, Secretary of Defense
Washington, D. C.
GOVERNOR FRANCIS SARGENT
State House, Boston, Mass.

Defendants

COMPLAINT

1. This is an action for an injunction to stop the waging of an aggressive war by the defendants in Vietnam, Laos, and Cambodia.

2. This Court has jurisdiction pursuant to the provisions of Article VI of the Constitution of the United States which states, "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and ALL TREATIES, MADE, or WHICH SHALL BE MADE, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of

any state to the contrary notwithstanding."

3. Plaintiff lives at 79 Glenville Ave., Allston, Mass.

4. The United States signed the United Nations Charter to which the United States agreed to adhere to. (Refer to Article VI of the Constitution of the United States), which the defendant Melvin R. Laird, Secretary of Defense, is in violation of.

5. Chapter I, Article I of the Charter of the United Nations states, "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

6. The defendants are waging an aggressive war, threatening the peace of and are interferring with the self determination of the peoples of Vietnam, Laos, and Cambodia, and are a threat to universal peace.

7. This court has jurisdiction pursuant to the provisions of Article I (section 10) of the Constitution of the United States which states, "No state shall without the consent of congress, lay any duty of tonnage, keep troops, or ships of

war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or ENGAGE IN WAR, UNLESS ACTUALLY INVADED, OR IN SUCH IMMINENT DANGER AS WILL NOT ADMIT OF DELAY."

8. The State of Massachusetts has not been actually invaded by Vietnam, Laos, or Cambodia or is it in such imminent danger as will not admit of delay, nor has Governor Francis Sargent the consent of congress to engage the State of Massachusetts in a war.

WHEREFORE, the Plaintiff prays that this Court:

(a). Issue an injunction to stop of waging of an aggressive war in Vietnam, Laos, and Cambodia by the defendants.

(b). Order the defendants to comply with Article VI and Article I (section 10) of the Constitution of the United States.

(c). Order the defendants to honor the Charter of the United Nations.

Respectfully submitted,

/s/ CEDALLE H. PEARL, pro se
Cedalle H. Pearl

Dated: July 13, 1971

RECEIVED FOR FILING
DATE: July 15, 1971
PHILIP J. LYONS
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Civil No. CA 71-1472-W

CEDALLE H. PEARL

Plaintiff

v.

MELVIN R. LAIRD, Secretary of Defense
Washington, D. C.

GOVERNOR FRANCIS SARGENT
State House, Boston, Mass.

Defendants

This is a motion by the plaintiff to amend complaint, CA 71-1472-W, by adding:

That jurisdiction arises under 28 U.S.C., section 1331 (plaintiff having paid taxes in excess of $10,000.00 to support the war), 28 U.S.C., section 1343 (as to defendant

Francis Sargent, and 28 U.S.C., section 1361) as to defendant Melvin R. Laird.

Respectfully submitted,

by

/s/ CEDALLE H. PEARL, pro se
Cedalle H. Pearl

Dated:
July 15, 1971

Denied
Wyzanski, C. J.
July 15 '71.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Civil No. CA 71-1472-W

CEDALLE H. PEARL

Plaintiff

v.

MELVIN R. LAIRD, Secretary of Defense
GOVERNOR FRANCIS SARGENT

Defendants

NOTICE OF APPEAL

Notice is hereby given that Cedalle H. Pearl, plaintiff above named, hereby appeals to the United States Court of Appeals for the First Circuit order of dismissal entered in this action on the 13 day of July 1971 and order of denial entered in this action on the 15 day of July 1971.
August 9, 1971

CEDALLE H. PEARL, pro se

/s/ CEDALLE H. PEARL
79 Glenville Ave.,
Allston, Mass. 02134

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 71-1249 August 17, 1971

CEDALLE H. PEARL,

Plaintiff, Appellant,

v.

MELVIN R. LAIRD, Secretary, Etc., et al.,

Defendants, Appellees.

STATEMENT OF ISSUES

1. I was not given a hearing for the motion for an injunction.
2. The motion to amend was denied without an explanation or legal reason.
3. The Constitution of the U.S.A. is the law of the land.
4. A treaty signed by the U.S.A. is the supreme law of the land.
5. The United Nations Charter was signed by the U.S.A. and the U.S.A. agreed to adhere to this treaty.
6. The officials and employees of the U. S. government must adhere to the U. S. Constitution.
7. The governor of a state must adhere to the U. S. Constitution.

Respectfully submitted,

/s/ CEDALLE H. PEARL, pro se
Cedalle H. Pearl
79 Glenville Ave.,
Allston, Mass. 02134

28 U.S.C. 1254 (1)

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

28 U.S.C. 1331 (a)

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

28 U.S.C. 1343

"The district courts shall have the original jurisdiction of any civil action authorized by law to be commenced by any person:

1. To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

2. To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

"3. To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

28 U.S.C. 1361

"ACTION TO COMPEL AN OFFICER OF THE UNITED STATES TO PERFORM HIS DUTY.

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

THAYER-DEARING COMPANY LEGAL PRINTERS, BOSTON

No. 71-883

In the Supreme Court of the United States

OCTOBER TERM, 1971

CEDALLE H. PEARL, PETITIONER

v.

MELVIN R. LAIRD, SECRETARY OF DEFENSE,
FRANCIS SARGENT, GOVERNOR OF MASSACHUSETTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT LAIRD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-883

CEDALLE H. PEARL, PETITIONER

v.

MELVIN R. LAIRD, SECRETARY OF DEFENSE, FRANCIS SARGENT, GOVERNOR OF MASSACHUSETTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT LAIRD IN OPPOSITION

Petitioner, a citizen of Massachusetts, brought this action to enjoin the United States' involvement in the hostilities in Vietnam, as unconstitutional and in violation of the United Nations Charter. The district court dismissed the complaint and the court of appeals summarily affirmed.

The question of the legality of American participation in Vietnam was before this Court recently on the motion by the Commonwealth of Massachusetts

for leave to file a complaint in *Massachusetts* v. *Laird*, No. 42 Original, October Term 1970, motion denied, 400 U.S. 886. For the reasons stated in our brief in opposition in that case (No. 42 Original, at pp. 17-42), we submit that the issue, including whether the United States is in violation of the United Nations Charter, is not susceptible of judicial determination or effective judicial relief and presents a nonjusticiable political question. See *Baker* v. *Carr*, 369 U.S. 186; *Powell* v. *McCormack*, 395 U.S. 486; *Georgia* v. *Stanton*, 6 Wall. 50; *Luther* v. *Borden*, 7 How. 1. This Court recently declined to review on certiorari a similar challenge brought by a serviceman. See *Orlando* v. *Laird*, 443 F. 2d 1039 (C.A. 2), certiorari denied, 404 U.S. 869.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1972.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 457151 491